IN THE HIGH COURT OF UTTRANCHAL
AT NAINITAL

First Appeal From Order No. 19 of 2004
(Old No. 323 of 1986)

1. Smt. Debuli Devi W/o Sri Dhan Ram
2. Gokul Ram S/o Sri Hari Ram
3. Km. Kamla D/o Sri Hari Ram
   Appellants No. 2 and 3 are minors
   Through their natural Guardian
   Hari Ram
   All R/o Gram Patsuli
   Patti Bankot
   Tehsil & District Pithoragarh ...Appellants

Vs

1. Sri Kishan Chandra Bhatt
   S/o Sri Mathura Dutt Bhatt
   Owner of Bus No. 3078 USR
   K.M.V.N. Ltd.
   R/o Haldwani
   District Nainital
2. Collector, Pithoragarh
3. The Oriental Fire & General Insurance Co. Ltd.
   Head Office Hazratganj, Lucknow through
   Branch Manager
   Haldwani,
   District Nainital ... Respondents

Sri D.C.S. Rawat and Sri Neeraj Upreti, learned counsel for the appellants
Sri Deepak Rawat, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This appeal under Section 110D of the Motor Vehicles Act has been preferred by the appellants against the judgment and order dated 23.12.1985 passed by the Motor Accidents Claim Tribunal/District Judge, Pithoragarh dismissing the Motor Accident Claim Case No. 1 of 1984, Sri Hari Ram & others Vs Sri Krishan Chandra & others.

2. Brief facts of the giving rise to this case are on 30.06.1983 at about 11:00 a.m. the bus carrying the marriage party from Barkot, District Pithoragarh to Dugchaura, District

Almora. At about 01:00 p.m. when the bus reached near *Simalta* it lost the control and dashed against the tree and ran down in a *khud* due to which the members of the marriage party sustained injuries. As a result of the injures, Jeewan Ram died on the spot. It is said that the accident was caused due to rash and negligent driving of the driver of the bus. According to the appellants, the deceased – Jeewan Ram at the time of the accident was aged about 22 years and he used to work as tailor and assist in agricultural occupation also. Therefore, the appellants filed claim petition before the Tribunal concerned for Rs. 80,000/- as compensation.

3. Thereafter, the opposite party No. 1 – Kishan Chandra Bhatt filed its written statement and contested the petition. He has stated in the written statement that at the time of driving, the steering was broken and failed to function therefore, the driver lost control over the vehicle. According to the opposite party No. 1, the appellants had received Rs. 20,000/- from the Collector, Pithoragarh and he had also paid Rs. 2,000/- to them therefore, the appellants were not entitled for further compensation.

4. After hearing learned counsel for the parties and perusal of the record, the Tribunal framed following issues:-

i) Whether the accident resulting in the death of Jeewan Ram occurred due to rash and negligent driving of vehicle No. USR 3078 by is driver?

ii) To what amount of compensation, if any, and for which of the opposite parties are the claims entitled?

5. Both the parties produced the evidence in support of their case. Learned Tribunal after having considered the entire material available on record and hearing learned counsel for the parties was pleased to award compensation for an amount of Rs. 24,000/- vide judgment and order dated 23.12.1985. The Tribunal deducted the amount of Rs. 22,000/- paid as an ex-gratia payment made by the Government and by owner of the vehicle. The rest of the amount of Rs. 2,000/- is directed to be paid by the Insurer of the vehicle by way of the impugned judgment and award.

6. Feeling aggrieved by the aforesaid judgment and order dated 23.12.1985, the appeal has been preferred by the claimants before the Court of Allahabad High Court, which has been transferred to this Court after creation of new State.

7. Heard Sri D.C.S. Rawat and Sri Neeraj Upreti, learned counsel for the appellants, Sri Deepak Rawat, learned counsel for the respondent and perused the record.

8. Learned counsel for the appellant has argued that the Tribunal has committed a manifest error by deducting Ex-gratia amount paid to the claimants by the Collector as well as the owner of the deponent an amounting to Rs. 22,000/-.

9. It has been submitted that the amount to be paid to the dependent of the deceased is statutory under the Motor Vehicles Act, while the amount which has already been paid to the appellant by the State Government is an obligatory on account of ex-gratia payment paid under the public welfare and social security scheme of the Government. Hence, this payment cannot be deducted from the amount of compensation awarded by the Motor Accident Claim Tribunal.

10. Learned counsel for the Insurance Company has argued that in view of the condition of policy the maximum amount of compensation to be paid by the Insurance Company to the dependent is Rs. 15,000/- and the Insurance Company is not liable to pay the amount of compensation more than 15,000/- in any case of fatal accident.

11. Having considered the arguments advanced by the learned counsel for the parties and after perusal of the record, I am of the view that the claim tribunal concerned has taken a conservative view regarding calculation of amount of award by deducting the Ex-gratia payment made to the claimants.

12 The Hon'ble Apex Court in a case reported in ***United India Insurance Co. Ltd. Vs Patricia Jean Mahajan*** reported in ***2002 ACJ 1441 (SC)*** has observed as under:-

> *"We are in full agreement with the observations made in the case of Helen Rebello[11] that principle of balancing between losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have some correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decision referred to in the earlier part of this judgment, it is clear that the amount on account of social security as may have been received must have a nexus or relation with the accidental injury or death, so far to be deductible from the amount of*

compensation. There must be some correlation between the amount received and the accidental death or it may be in the same sphere, absence (sic) the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far as other items in respect of which learned counsel for the Insurance Company has vehemently urged, for example some allowance paid to the children, and Mrs Patricia Mahajan under the social security system, no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made, one of the constituents of the fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under the social security system which the claimant would have also otherwise been entitled to receive irrespective of accidental death of Dr Mahajan. If the proposition "receipts from whatever source"is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains, maybe on account of savings or other investment etc. made by the deceased, would not go to the benefit of the wrongdoer and the claimant should not be left worse off, if

he had never taken an insurance policy or had not made investments for future returns.

37. We therefore, do not allow any deduction as pressed by the Insurance Company on account of receipts of insurance policy and social security benefits received by the claimants."

13. In view of the aforesaid observation made by the Hon'ble Apex Court, it is quite clear that the M.A.C.T. concerned could not deduct the amount paid in the Ex-gratia to the claimants from the amount of compensation awarded.

14. The evidence shows that the deceased Jeewan Ram was 22 years of age on the date of the accident, therefore it was justified on the part of the Tribunal to award the amount of compensation keeping in view the age of the parents of the deceased. The Tribunal has calculated towards contribution of the deceased to his parents to the tune of Rs. 100/- per month. The Multiplier of 20 years has been applied by the Tribunal, keeping in view the age of the parents. Therefore, the amount of compensation to be awarded to the parents of the deceased comes to Rs. 24,000/- which has been awarded by the Tribunal.

15. I do not find any infirmity in the impugned judgment and award as far as the amount of compensation to be awarded to the claimants is concerned.

16. As far as the arguments advanced by learned counsel for the Insurance Company is concerned, it carries no force. The Hon'ble Apex Court in ***Sheikhupura Transport Co. Ltd. Vs Northern India Transporters' Insurance Co. Ltd.*** reported in ***1971 ACJ 206 (SC)*** has held as under***:-***

"Under Section 110-B of the Motor Vehicles Act, 1939 the tribunal is required to fix such compensation which appears to it to be just. The power given to the tribunal in the matter of fixing compensation under that provision is wide. Even if we assume (we do not propose to decide that question in this case) that compensation under that provision has to be fixed on the same basis as is required to be done under Fatal Accidents Act, 1855 (Act 13 of 1855), the pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever sources come to them by reason of the death, that is, the balance of loss and gain to a dependant by the death must be ascertained."

17. Having regards to the observations made by the Hon'ble Apex Court, the amount of compensation awarded by the Tribunal cannot be said to be arbitrary or illegal. As the vehicle in question was insured with Oriental Fire & General Insurance Co. Ltd. is liable to pay the amount of compensation awarded in favour of the claimants.

18. On the basis of the assessment of evidence of record I come to the conclusion that the appeal is liable to partly allowed. The impugned judgment and award dated 23.12.1985 is modified to the extent that the claimants are entitled for an compensation amounting to Rs. 24,000/- which shall be paid by the Insurer of the vehicle i.e. Oriental Fire &

General Insurance Co. Ltd. The finding of the claim tribunal deducting the amount of Rs. 22,000/- out of total amount of compensation is hereby set aside.

(B.C. Kandpal, J.)

04.09.2006
ASWAL